

<sup>3</sup> The Board notes that, following the December 19, 2019 decision, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish that she sustained a right shoulder injury while in the performance of duty on May 7, 2019, as alleged.

## **FACTUAL HISTORY**

On May 14, 2019 appellant, then a 56-year-old rural carrier associate (RCA), filed a traumatic injury claim (Form CA-1) alleging that at 3:30 p.m. on May 7, 2019 she sustained an injury to her right shoulder while in the performance of duty. She explained that she was hit by a set of double doors when another employee pushed a cart through to enter a room. Following the incident, appellant encountered extreme pain in her right shoulder and arm that permeated to her neck. The reverse side of the claim form notes appellant's duty stations as: Hudson Post Office; Pittsford Post Office; Waldron Post Office; and Clayton Post Office. The form further indicates that appellant's regular work hours were 8:00 a.m. to 4:00 p.m.; however, with regard to appellant's work schedule there were no guaranteed hours as her schedule varied. Additionally, appellant's supervisor indicated on the reverse side of the claim form that she was not in the performance of duty when the injury occurred as she was off the clock and entered the building to review her work schedule without looking through the window to confirm clearance. Appellant stopped work on May 13, 2019.

In a May 13, 2019 statement, appellant explained that on May 7, 2019 she came into the Hudson Post Office to get her new schedule. As she was walking out the double doors K.B., appellant's coworker, came through the doors with a loaded cart and rammed the door into her shoulder. Appellant immediately grabbed her shoulder and stated that she could not respond to K.B.'s apology because the impact took her breath away. She identified K.W., another coworker, as a witness to the incident. In a separate statement of even date, appellant reiterated that on May 8, 2019 K.B. came through the double doors with a cart and hit her right shoulder with the door.<sup>4</sup> She noted that she had pain in her right arm and right shoulder blade down to her fingers.

In a May 13, 2019 medical note, Dr. Eric Smith, Board-certified in emergency medicine, diagnosed calcific tendinitis of the right shoulder and prescribed a medication to treat appellant's condition. In a separate medical note of even date, he requested that she remain off work for the remainder of the week.

In a May 14, 2019 statement, K.W. explained that he did not personally witness the alleged incident within the week of May 6 to 10, 2019, but he did hear a commotion in the foyer. He heard K.B. apologize to appellant for hitting her with the door. Appellant did not immediately respond, but eventually told K.B. to go ahead and go through the doors. He then left the building.

In a May 14, 2019 duty status report (Form CA-17), Dr. Howard Merritt, Board-certified in emergency medicine, diagnosed a right shoulder contusion and underlying calcific tendinitis caused when a swinging door hit appellant's shoulder. He opined that she was not capable of performing her regular work duties and advised that she not resume work.

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<sup>4</sup> Appellant's statement identified May 8, 2019 as the date of injury and spelled K.B.'s name with a "C," however both of these appear to be typographical errors.

E.J., appellant's supervisor, indicated in a May 14, 2019 statement that when appellant reported to work on May 13, 2019 she informed her of the alleged May 7, 2019 incident in which she entered the Hudson Post Office around 3:30 p.m. to review her work schedule and her shoulder was hit when K.B. came through the swinging doors. E.J. indicated that appellant was off the clock at the time she came to review her schedule. Appellant explained to E.J. that she did not immediately report the incident because her shoulder did not start hurting until May 13, 2019. She initially stated that she did not want to seek medical attention, but later called her supervisor and changed her mind. E.J. noted that appellant stopped her route and visited the emergency room where a magnetic resonance imaging (MRI) scan was performed and indicated that no further damage of her right shoulder was found.

Appellant also submitted an undated occupational injury/illness status report with an illegible signature diagnosing right shoulder pain caused when a door opened and hit her right shoulder.

In a development letter dated May 15, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a factual questionnaire for her completion. In a separate development letter dated May 16, 2019, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond.

In response, appellant submitted a May 21, 2019 statement in which she insisted that she was required to go into the office<sup>5</sup> to review her schedule and explained that she did not call to review her schedule because the schedule often changes with no communication. She clarified that the employment incident occurred on May 7 and not May 8, 2019 and described the immediate effects of her injury as extreme pain on impact that eventually settled down with movement.

Appellant continued to submit medical evidence. In a May 16, 2019 diagnostic report, she underwent an x-ray of her right shoulder which found calcific tendinitis of the right shoulder. The report noted no acute fracture or dislocation and ruled out a small rotator cuff tear.

In a May 16, 2019 progress note, Dr. Riccardo Giovannone, a Board-certified orthopedic surgeon, reviewed the history of appellant's injury in which someone came through the double doors at work with a cart and jerked her arm back and diagnosed bilateral shoulder pain. In a medical note of even date, he diagnosed calcific tendinitis of the right shoulder and acute pain of the right shoulder and referred appellant to physical therapy. In a separate May 16, 2019 medical note, Dr. Giovannone recommended that appellant remain out of work until after being reevaluated on June 15, 2019.

Appellant submitted physical therapy notes dated from May 21 to June 13, 2019 in which Marilyn Rendel, a physical therapist, provided notes pertaining to appellant's treatment for her

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<sup>5</sup> The record indicates that Hudson Post Office is the main branch covering the Clayton, Pittsford, and Waldron branches. Appellant was scheduled to work from one of the smaller branches on May 7, 2019. She was injured when checking her work schedule at the Hudson Post Office (main branch) that afternoon.

calcific tendinitis of the right shoulder, acute pain of the right shoulder and stiffness of the right shoulder.

In a June 5, 2019 statement, appellant explained that she reported to the Hudson office every week for over a year in order to check her schedule for changes, make copies of her schedule, and report her time worked to her supervisors. She asserted that she has called multiple times to see if her schedule could be texted or e-mailed to her, but it had never been done before. Appellant indicated that the schedules are also posted in other offices, but the updates are never communicated or posted in those offices. She provided examples of times her schedule changed without notice and described the communication in the Hudson office as extremely poor and therefore, she often went in to the Hudson office to check the schedule herself. Appellant noted that she has come into the office while she was off the clock for several years, with management knowing, to check for new schedules and changes to her existing schedules and asserted that she had never been told to not do so. In a separate statement of even date, she again detailed the events of the alleged May 7, 2019 employment incident.

In a June 6, 2019 statement, G.O., appellant's postmaster, asserted that appellant was not required to come into the office to review her schedule on May 7, 2019 and explained the rules by which the schedules are normally posted. She controverted appellant's claim stating that appellant changed her explanation of the alleged employment incident three times and provided that upon investigation she could not duplicate the door hitting her in the shoulder the way appellant explained. G.O. asked appellant why she would use her right shoulder to open the door when she had a preexisting condition of calcific tendinitis and appellant could provide no explanation. On June 5, 2019 appellant came into the office and informed another supervisor that she had been thinking it over and reasoned that she must have been using her extended right arm to open the door when it was pushed back on to her by the other carrier. G.O. detailed a May 13, 2019 conversation appellant had with another supervisor where she stated that she had already been receiving shots for her calcific tendinitis for the past year and that she could not afford a \$2,000.00 deductible to get surgery on her shoulder. She also provided that she did not sign off on a Form CA-1 because appellant was not on the clock when her injury occurred.

In a June 10, 2019 statement, F.B., an RCA at the Pittsford Post Office, stated that at no point during orientation did a supervisor or postmaster state that carriers could not come into the office while they were off the clock for safety reasons. He provided that he had gone into the post office several times to take care of paperwork and for other reasons.

In another June 10, 2019 statement, P.K., appellant's coworker, stated that she had witnessed employees come into the Hudson Post Office while they were off the clock and that she herself had never been told not to do so.

In a June 12, 2019 statement, B.B., an employee at the Pittsford Post Office, asserted that in his 21 years of working at that post office no one had ever told him not to come in on his day off until appellant's alleged incident occurred. He indicated that he would start letting the rural carriers know to call in and noted that there was a lack of communication in the Hudson Post Office.

In a separate June 12, 2019 statement, L.T., a clerk at the Pittsford Post Office, noted that it was common for rural carriers to periodically check the schedule at the Hudson office as it was often updated. The statement noted that in order for the rural carriers to stay on top of their work

it was sometimes necessary for them to stop by in the Hudson office before or after their shift so they could better plan for their next day of work. During the week of May 6, 2019 the schedules were changed several times and it was confusing as there was a lack of communication from the Hudson office.

In a June 13, 2019 statement, S.J., a clerk of the Hudson Post Office, indicated that work schedules are posted in all four offices at the close of business every Wednesday. She claimed that she had texted pictures of the schedules to carriers in the past so that they would not have to come all the way into the Hudson office to view it. S.J. also asserted that she was told by management that it was the employees' responsibility to come in and check the schedules themselves. She agreed that a lack of communication does occur frequently in the Hudson office and reasoned that there were instances where management has changed the schedule and she did not receive a communication about it.

In a June 14, 2019 Form CA-17, Dr. Giovannone diagnosed a small rotator cuff tear of the right shoulder and calcific tendinitis due to the alleged May 7, 2019 employment incident and provided work restrictions for appellant to follow. In a medical note of even date, he opined that appellant could return to work on June 17, 2019 with no repetitive use of her upper extremity.

In a June 20, 2019 statement, G.O., appellant's postmaster, claimed that on May 7, 2019 appellant finished her shift at 2:50 p.m. and was definitely off the clock at 3:30 p.m. when her alleged injury occurred and attached a time-keeping record in confirming. She controverted appellant's statement, contending that she was not required to come into the office to copy her schedule and did so at her own preference. G.O. reviewed the post office scheduling procedure in which new schedules for the week are posted in each office every Wednesday. She asserted that management was not required to text or e-mail schedules to employees. G.O. explained that appellant's position as an RCA meant that her schedule was flexible and would be changed on occasion when a regular carrier is sick or requests leave from work. She claimed that when schedule changes occur she or a supervisor will personally call an RCA to inform them of the change and stated that she had not received a complaint from any other RCA about difficulties in obtaining the schedule or a lack of communication. G.O. challenged appellant's actions reasoning that her current schedule had been posted since May 1, 2019 and had not been changed and, therefore, asserted that she could have checked her schedule at any point. She also attached e-mails dated April 30 and May 5, 2019 demonstrating that she provided the schedules for the following weeks to the other post offices in advance.

In a June 26, 2019 medical note, Dr. Giovannone provided his updated suggestions for appellant's work restrictions.

By decision dated June 28, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her injury arose during the course of employment and within the scope of compensable work factors. It explained that she was off the clock when the May 7, 2019 employment incident occurred.

OWCP continued to receive evidence. Appellant submitted a May 22, 2019 physical therapy report from Ms. Rendel detailing her continued treatment for her calcific tendinitis of the right shoulder, acute pain of the right shoulder and stiffness of the right shoulder.

In a June 14, 2019 progress note, Dr. Giovannone provided an update on appellant's right shoulder as it related to her calcific tendinitis and recent reinjury. She informed him that an injection she received on May 16, 2019 helped along with physical therapy. Dr. Giovannone diagnosed calcific tendinitis and bilateral shoulder pain.

In a June 25, 2019 e-mail, G.O. clarified the structure of the RCA's duties as it pertained to their work assignments to one of three remote offices. She controverted appellant's injury reasoning that it did not occur at the employing establishment because she was at a remote post office and she was off the clock. G.O. stated that appellant was not required to come into the Hudson office at all because her schedule had not been updated.

On an August 23, 2019 appeal request form received by OWCP on September 25, 2019 appellant requested reconsideration of OWCP's June 28, 2019 decision.

In a May 1, 2019 medical report, Dr. Giovannone evaluated appellant for intermittent pain she experienced in her shoulders over the years, especially in the right shoulder. He referred to an April 30, 2019 x-ray of her right and left shoulders and diagnosed bilateral shoulders calcific tendinitis.

In a July 11, 2019 medical note, Dr. Giovannone requested that appellant be excused from work until she is reevaluated on July 17, 2019. In a July 17, 2019 progress note, he noted that appellant was not working because the employing establishment could not comply with her work restrictions. Appellant informed Dr. Giovannone that she still experienced pain in her right shoulder every once and a while. Dr. Giovannone diagnosed calcific tendinitis of the right shoulder and right rotator cuff tendinitis. In a medical note of even date, he suggested that appellant return to work beginning July 22, 2019 with no restrictions on a trial basis.

In three medical notes dated July 23, 2019, Dr. Giovannone recounted the May 7, 2019 injury in which appellant injured her right shoulder when a door impacted it and caused trauma and immobility. He stated that she was off work from May 13 to July 17, 2019 and was released to work with no restrictions after her shoulder showed full range of motion.

By decision dated December 19, 2019, OWCP denied modification of its June 28, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>6</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”<sup>9</sup> The phrase “sustained while in the performance of duty” has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.”<sup>10</sup> The phrase “in the course of employment” is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in the master’s business, at a place where the employee may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.<sup>11</sup> In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances presented, causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.<sup>12</sup>

Injuries arising on the employing establishment’s premises may be approved if the claimant was engaged in activity reasonably incidental to his or her employment.<sup>13</sup> The course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has established that an incident occurred in the performance of duty on May 7, 2019, as alleged.

As previously noted, to arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in the master’s business, at a place where the employee may reasonably be expected to be in connection with the employment, and

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<sup>7</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> 5 U.S.C. § 8102(a).

<sup>10</sup> See *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

<sup>11</sup> See *M.T.*, *id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

<sup>12</sup> *J.N.*, Docket No. 19-0045 (issued June 3, 2019); *M.W.*, Docket No. 15-0474 (issued September 20, 2016); *Mark Love*, 52 ECAB 490 (2001).

<sup>13</sup> *A.P.*, Docket No. 18-0886 (issued November 16, 2018); *S.M.*, Docket No. 16-0875 (issued December 12, 2017); *J.O.*, Docket No. 16-0636 (issued October 18, 2016); *T.L.*, 59 ECAB 537 (2008). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4a(2) (August 1992).

<sup>14</sup> See *J.K.*, Docket No. 17-0756 (issued July 11, 2018).

while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.<sup>15</sup>

Herein, the record reflects that on May 7, 2019 appellant's shift at a branch post office ended at 2:50 p.m. and she entered the Hudson Post Office at 3:30 p.m. in order to check her schedule for the following day. She asserted in statements dated May 21 and June 5, 2019 that she had been coming into the main (Hudson) post office after hours with management's knowledge in order to check her schedule for the past year. Appellant explained that she had requested multiple times that any updates to her schedule be e-mailed or texted to her, but she had never received them and also that the Hudson Post Office often changed the schedules without communicating the changes to its employees. Appellant also contended that she had never been told not to come to the main (Hudson) post office on days when she was not scheduled to work there.

Appellant also submitted multiple statements from coworkers supporting her allegations.

The Board finds that on May 7, 2019 when appellant arrived at the Hudson Post Office after her work shift, she was engaged in a preparatory and/or incidental act, and was thus in the performance of duty. As stated above, the Board has held that the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts.<sup>16</sup> Here, appellant arrived to check her schedule only 40 minutes after the end of her shift in order to review her work schedule for her next shift. Additionally, she submitted multiple statements demonstrating that it was important for employees to come in and check their schedules in person in order to stay on top of their work due to a lack of communication from the Hudson Post Office and the frequency with which work schedules are updated. The Board thus finds that appellant has established that she was in the performance of duty at the time of the May 7, 2019 employment injury.

As appellant has established that the May 7, 2019 employment incident factually occurred, the question becomes whether this accepted employment incident caused an injury.<sup>17</sup> The Board will, therefore, set aside OWCP's December 19, 2019 decision and remand the case to OWCP for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted employment incident.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish that an incident occurred in the performance of duty on May 7, 2019, as alleged. The Board further finds that this case is not in posture for decision with regard to whether she sustained an injury causally related to the accepted May 7, 2019 employment incident.

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<sup>15</sup> *Supra* note 11.

<sup>16</sup> *Supra* note 14.

<sup>17</sup> *M.L.*, Docket No., 19-0361 (issued October 24, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).



**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 16, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board